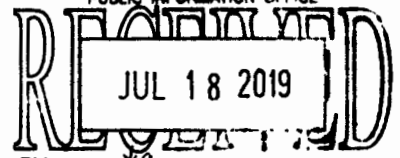




Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE



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 TIME: 2:06 pm

**FIRST DIVISION**

**SERGIO O. VALENCIA,**  
*Petitioner,*

**G.R. No. 220398**

Present:

- versus -

**BERSAMIN, C.J.,**  
**DEL CASTILLO,**  
**JARDELEZA,**  
**REYES, A.,\* and**  
**CARANDANG,\*\* JJ.**

**HON. SANDIGANBAYAN and**  
**PEOPLE OF THE PHILIPPINES,**  
*Respondents.*

Promulgated:

**JUN 10 2019**

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**DECISION**

**DEL CASTILLO, J.:**

This Petition for *Certiorari* under Rule 65 of the Rules of Court, filed by Sergio O. Valencia (petitioner), assails the April 6, 2015 Resolution<sup>1</sup> of the *Sandiganbayan* (First Division) in Criminal Case No. SB-12-CRM-0174 which denied petitioner's Demurrer to Evidence on the ground that there was sufficient evidence to hold him liable for malversation under Article 217 of the Revised Penal Code (RPC), as well as its September 10, 2015 Resolution<sup>2</sup> which denied petitioner's Motion for Reconsideration subsequently filed for lack of merit.

***Factual Antecedents:***

On July 26, 2011, a verified complaint for Plunder, Malversation of Public Funds and Violation of Anti-Graft and Corrupt Practices Act (Republic Act [RA] No. 3019) was filed against petitioner along with Gloria Macapagal-Arroyo (Arroyo), Jose R. Taruc V (Taruc), Raymundo T. Roquero (Roquero), Manuel L. Morato (Morato), Reynaldo Villar (Villar), Eduardo Ermita (Ermita), Rosario Uriarte (Uriarte) and Fatima A. S. Valdes (Valdes), for

\* Per Raffle dated April 10, 2019.

\*\* On leave.

<sup>1</sup> *Rollo*, Vol. I, pp. 127-181; penned by Associate Justice Rafael R. Lagos and concurred in by Associate Justices Efren N. De La Cruz and Napoleon G. Inoturan; Associate Justice Rodolfo A. Ponferrada and Alex L. Quiroz, with Concurring and Dissenting Opinion.

<sup>2</sup> *Id.* at 214-226.

alleged irregularities in the utilization and additional grant of Confidential and Intelligence Fund (CIF) to the Philippine Charity Sweepstakes Office (PCSO).

On December 2, 2011, another verified complaint for Plunder and Violation of RA 3019 was filed by PCSO's Board Secretary Eduardo G. Araullo against the same individuals together with Benigno Aguas (Aguas) and Nilda B. Plaras (Plaras) in connection with the illegal and fraudulent release, withdrawal, and disbursement of PCSO's CIF in the year 2007 to 2010.

During the time material, Arroyo was then the President of the Philippines, Ermita was the Executive Secretary, Aguas was the PCSO Budget and Accounts Officer, Uriarte was the PCSO General Manager and Vice Chairman, petitioner was the PCSO Chairman of the Board of Directors, while Morato, Taruc, Roquero and Valdes, were PCSO Members of the Board of Directors. On the other hand, Villar was the Chairman of the Commission on Audit (COA) and Plaras was the COA Head of Intelligence/Confidential Fund Fraud Audit Unit.

After they filed their respective counter-affidavits in the two complaints which were later consolidated, the Office of the Ombudsman issued on July 10, 2012, a Review Joint Resolution finding probable cause to indict them, except Ermita, for the crime of Plunder, and recommended the immediate filing of the corresponding information against them with the *Sandiganbayan*. Forthwith, an information on even date was filed and docketed as SB-12-CRM-0174.

Petitioner's Motion for Reconsideration to the aforesaid finding was denied and, soon after entering a plea of not guilty, he filed a Petition for Bail.

After the presentation of evidence in connection with his petition for bail, the *Sandiganbayan*, on June 6, 2013, granted the bail petition ratiocinating that the evidence so far presented did not show evident proof of petitioner's guilt insofar as the crime of plunder was concerned since his cash advances only amounted to ₱13.3 million, or below the ₱50 million threshold in plunder.

After the prosecution adduced additional evidence on the merits, petitioner filed a Motion for Leave of Court to File Demurrer to Evidence which was granted. In support of his Demurrer to Evidence, petitioner contended that the elements of the crime of plunder were not established. He averred that the prosecution failed to prove that he amassed, accumulated, or

acquired ill-gotten wealth amounting to at least ₱50 million. He claimed that the cash advances for PCSO's intelligence activities were properly liquidated per the credit advices issued by the COA Chairman. He also contended that the prosecution failed to prove that there were no intelligence projects for which the ₱13.3 million was allegedly disposed of. Lastly, he pointed out that there was no evidence to prove conspiracy.

***Sandiganbayan April 6, 2015 Resolution:***

In its assailed Resolution dated April 6, 2015, the *Sandiganbayan* denied petitioner's Demurrer to Evidence. It held that the credit advices issued by the COA, purportedly showing petitioner's liquidation of the amount of ₱13.3 million, were binding only on the COA, but not the Ombudsman or the court. Moreover, it ruled that these credit advices approving petitioner's disbursements affected only his administrative accountability, but not his criminal responsibility,<sup>3</sup> as enunciated in *Aguinaldo v. Sandiganbayan*.<sup>4</sup>

Likewise, the *Sandiganbayan* gave credence to the testimonies of the intelligence chief of the military, police, and the National Bureau of Investigation that there were no intelligence projects for which petitioner's cash advances were allegedly disbursed as claimed in his liquidation documents.<sup>5</sup>

Further, the *Sandiganbayan* ruled that there was not enough evidence to show that he conspired with his co-accused Arroyo, Aguas and Uriarte. However, the *Sandiganbayan* held that petitioner could not be completely exculpated. It found that, although petitioner could not be held liable for plunder (since he only allegedly amassed the amount of ₱13.3 million which was way below the ₱50 million threshold for plunder), still, there was sufficient evidence to convict him of malversation under Article 217 of the RPC. The *Sandiganbayan* ratiocinated, thus:

Accused Valencia's exculpation, nevertheless, is not absolute. His CIF disbursements may not be part of the conspiracy to plunder but it cannot be denied that they were irregular. Valencia was able to access these CIF funds also in violation of COA Circulars and LOI 1282. In his cover letters to accused Villar for his liquidations of his CIF, Valencia repeatedly stated that 'The supporting details of the expenses that were incurred from the fund are in our possession which can be made available if so required.' In the attached Certifications, he stated:



<sup>3</sup> *Rollo*, Vol. I, pp. 172-173.

<sup>4</sup> 332 Phil. 893 (1996).

<sup>5</sup> *Rollo*, Vol. I, pp. 173-174.

‘x x x that the details and supporting documents and papers on these highly confidential missions and assignments are in his office’ custody and being kept in confidential file which can be made available if circumstances so demand. x x x’

Despite these repeated statements, the detail and supporting documents and papers on these highly confidential missions and assignments could not be produced by Valencia up to now. These missing documents, in addition to the certifications and testimonies from the PNP, AFP and NBI that they have no records of any such projects, [lead] this Court to ask where the ₱13 million CIF funds released to Valencia went. As the trial stands now, while accused Valencia cannot be found guilty of plunder beyond reasonable doubt, there is, however, sufficient evidence to convict him of Malversation under [Article] 217 of the Revised Penal Code.

Under Section 4, Rule 120 of the Revised Rules of Criminal Procedure, when there is a variance between the offense charged in the complaint or information, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. Applying this variance rule, accused Valencia may be convicted of the offense proved which is included in the crime of plunder, which, in this case is Malversation. x x x

x x x x

Therefore, as charged in the information, the elements of Malversation exist and the prosecution, although unable to sufficiently prove plunder, was able to present sufficient evidence for Malversation. Given the evidence presented by the prosecution, namely, the certifications from the AFP, NBI and PNP and the testimonies in support of and authenticating the same, there is enough proof of malversation to support Valencia’s conviction. As the accountable officer for the more than ₱13 million CIF that he received, it was incumbent upon him to show the proper liquidation thereof, especially in view of his certifications. That he cannot do so raises the presumption that he has put such missing fund or property to his personal use, thus, misappropriating the same.<sup>6</sup>

In fine, the *Sandiganbayan* denied petitioner’s Demurrer to Evidence based on its finding that there was sufficient evidence to hold him liable for Malversation under Article 217 of the RPC.<sup>7</sup>

Aggrieved, petitioner filed a Motion for Reconsideration arguing that his constitutional right to due process and the right to be presumed innocent until proven guilty were violated. He asserted that “the crime of plunder cannot be downgraded to the crime of malversation as the latter is not included

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<sup>6</sup> Id. at 176-178.

<sup>7</sup> Id. at 180.

in the former;”<sup>8</sup> in any case, there was no sufficient evidence to hold him liable for malversation.<sup>9</sup>

In its second assailed Resolution of September 10, 2015, the *Sandiganbayan* spurned petitioner’s contention as follows:

Contrary to accused Valencia’s position, the variance rule also finds applicability in the determination of whether an offense punishable under the Revised Penal Code (e.g. malversation or bribery) is necessarily included in a crime punishable under special law. x x x

x x x x

The real nature of the criminal charge is the actual recital of the facts in the Information, not the caption or preamble, or the specification of the provision of law alleged to have been violated. Any conviction of an accused should only arise from the allegations set forth in the Information. x x x

x x x x

The above accusations against accused Valencia are unmistakable and these constitute the fourth element of malversation. The statement that the accused diverted the funds and converted the same, withdrew and received and unlawfully transferred the proceeds into their possession and control, and that they took advantage of their respective positions to enrich themselves are the very same allegations that can be found in an information for malversation. While the words used in the information may not be those used in the Revised Penal Code, it is easy to understand what they convey. As long as the information makes out a case for a crime, the accused cannot claim deprivation of the right to be informed. Verily, accused Valencia was made aware of the acts he supposedly committed and he could very well defend himself against these same accusations, whether it [be] for the crime of plunder or malversation.

x x x x

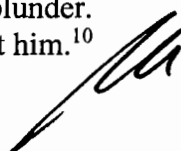
Lastly, although this Court was divided in the issue as to whether there was sufficient evidence against accused Arroyo and Aguas with regard to the plunder charge, the Court was unanimous in ruling that accused Valencia could still be held liable for malversation under the variance rule. It is only the fact that accused Valencia’s accumulation of CIF funds fell short of the ₱50 Million threshold which negated his liability for plunder. Other than that, a clear case for malversation can be pursued against him.<sup>10</sup>

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<sup>8</sup> Id. at 195.

<sup>9</sup> Id. at 216.

<sup>10</sup> Id. at 215-221.



Following the denial of his Motion for Reconsideration, petitioner filed the instant Petition for *Certiorari*<sup>11</sup> under Rule 65 of the Rules of Court anchored on the following issues/arguments:

## I

The Sandiganbayan gravely abused its discretion in promulgating the assailed Resolutions violating petitioner's right to due process;

## II

The assailed Resolutions violate the petitioner's constitutional right to be presumed innocent until proven guilty;

## III

The Sandiganbayan gravely abused its discretion in finding that there is sufficient evidence to hold petitioner liable for malversation under the Revised Penal Code.<sup>12</sup>

Petitioner asserts that the denial of his Demurrer to Evidence and his subsequent Motion for Reconsideration, based on the *Sandiganbayan's* finding that the information included the crime of malversation, were tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

Respondents, on the other hand, advocate the theory that an order denying a demurrer to evidence is interlocutory and is not appealable. The proper recourse is for the court to proceed with the trial after which the accused may file an appeal from the judgment of the lower court rendered after the trial. Respondents insist that the subject resolutions were not issued with grave abuse of discretion amounting to lack of jurisdiction.

During the pendency of this case, the issue regarding the sufficiency of the allegations in the information for plunder as to include the crime of malversation against herein petitioner was resolved in the April 18, 2017 *En Banc* Resolution of the Court in *Macapagal-Arroyo v. People*.<sup>13</sup> The said Resolution pertained to the State's Motion for Reconsideration to the July 19, 2016 *En Banc* Decision<sup>14</sup> wherein the Court annulled and set aside the *Sandiganbayan's* April 6, 2015 and September 10, 2015 Resolutions in Criminal Case No. SB-12-CRM-0174 as to Arroyo and Aguas, granted the respective Demurrer to Evidence of Arroyo and Aguas and dismissed Criminal Case No. SB-12-CRM-0174 as against them for insufficiency of evidence. Notably, the State's Motion for Reconsideration was denied for lack of merit in the April 18, 2017 Resolution. One of the key issues behind the Court's disposition was: Even assuming that the elements of plunder were

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<sup>11</sup> Id. at 3-60.

<sup>12</sup> Id. at 15.

<sup>13</sup> G.R. Nos. 220598 and 220953, April 18, 2017 (Resolution), 823 SCRA 370.

<sup>14</sup> 790 Phil. 367 (2016).

not proven beyond reasonable doubt, the evidence presented by the People established at least a case for malversation against Arroyo and Aguas.

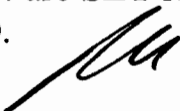
In addressing the said issue in its April 18, 2017 Resolution, the Court ruled:

In thereby averring the predicate act of malversation, the State did not sufficiently allege the aforementioned essential elements of malversation in the information. The omission from the information of factual details descriptive of the aforementioned elements of malversation highlighted the insufficiency of the allegations. Consequently, the State's position is entirely unfounded.

The Court judiciously believes that the foregoing ruling squarely applies in the instant petition since one of the issues raised in the latter is the denial of petitioner's constitutional right to due process. He asserts that he cannot be held liable for malversation in view of the insufficiency of the allegations of its elements in the information. It is well to note that the Information subject of the aforementioned cases of Arroyo and Aguas is the very same information under scrutiny in the present case wherein petitioner is their co-accused and where all the incidental matters stemmed and had their origin. Hence, there is no reason not to apply the afore-quoted ruling in the present petition since it has reached its finality, per Entry of Judgment, on May 30, 2017.<sup>15</sup> We are therefore not free to disregard it in any related case which involves closely similar factual evidence. Otherwise, we would jettison the doctrine of immutability of final judgment and, further, obviate the possibility of rendering conflicting rulings on the same set of facts and circumstances in the same information.

It is therefore apparent that in denying petitioner's Demurrer to Evidence and ruling that there was sufficient evidence to hold him liable for malversation despite the lack of specific allegations of the factual details pertaining to the crime of malversation in the information, respondent *Sandiganbayan* is said to have gravely abused its discretion amounting to lack of jurisdiction. Consequently, we find no need to discuss the other issues raised by petitioner.

**WHEREFORE**, the Petition is **GRANTED**. The assailed April 6, 2015 and September 10, 2015 Resolutions of the *Sandiganbayan* in Criminal Case No. SB-12-CRM-0174 are **SET ASIDE** and the Demurrer to Evidence of petitioner is **GRANTED**.



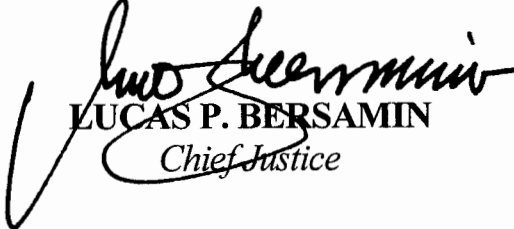
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<sup>15</sup> See *rollo*, Vol. IV, p. 1752.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
*Chief Justice*

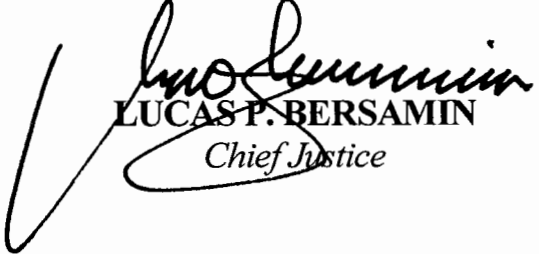
  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

  
**ANDRES B. REYES, JR.**  
*Associate Justice*

(On Leave)  
**ROSMARI D. CARANDANG**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
*Chief Justice*